

ENTERED

October 06, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

REGINALD BROWDER, §
§
Plaintiff, §
v. § CIVIL ACTION NO. H-22-2896
§
H-E-B, LP, §
§
Defendant. §
§

ORDER

Reginald Browder alleges that on December 17, 2021, he was discriminated against and physically injured while attempting to fill his car with gas at an HEB grocery store in College Station, Texas. Browder sued on August 22, 2022. He claims to have served HEB, but it has not answered or otherwise appeared. Browder now seeks entry of default under Rule 55(a) of the Federal Rules of Civil Procedure. (Docket Entry No. 7).

Browder's motion is denied. Rule 55(a) allows for entry of default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” FED. R. CIV. P. 55(a). But “[b]efore a default can be entered, the court must have subject-matter jurisdiction and jurisdiction over the party against whom the judgment is sought, which also means that the party must have been effectively served with process.” 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2682 (4th ed. 2022) (footnote omitted).

Browder has failed to show that HEB was properly served. To properly serve a corporation, partnership, or association, a plaintiff must “deliver[] a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by

appointment or by law to receive service of process.” FED. R. CIV. P. 4(h)(1). The proof of service submitted to the court, (Docket Entry No. 5), states that the process server served the summons on “Manager Rick” at the H-E-B on 1900 Texas Avenue South, College Station, TX 77840. “Manager Rick” is not the agent registered with the Texas Secretary of State as the designated agent for service of process. Nor is the 1900 Texas Avenue location the registered address. Because Browder failed to show effective service, the motion for entry of default is denied.

Browder must properly serve HEB within the time period allotted by the federal rules, *see* FED. R. CIV. P. 4(m), or the court will dismiss this case.

SIGNED on October 6, 2022, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge